

**REMARKS**

This Amendment and Request for Reconsideration is submitted in response to an Office Action mailed March 7, 2008, in which the Examiner indicated that a previous response, filed on January 17, 2008 was non-compliant. In particular, the current status of pending claim 17 was incorrectly identified as (original) when it should have been identified as (currently amended). Applicant has corrected the status of pending claim 17 as above, and requests entry of the amendment.

The January 17, 2008 amendment was in response to an outstanding Office Action dated August 14, 2007, the shortened statutory period for response having expired on November 14, 2007. Accordingly, a petition for an extension of time and associated fee were enclosed with the January 2008 amendment. In the event the Commissioner determines that an additional extension of time is required, the undersigned hereby petitions for such extension and authorizes the Commissioner to charge any required fee to the Milbank deposit account (13-3250).

The undersigned thanks the Examiner for the time taken during a telephone interview on December 21, 2007, for discussion of the cited references and the pending claims, and in particular, thanks the Examiner for the discussion concerning the teaching of *Sullivan*.

I. Status of the Claims

Please amend claims 1, 11, 17, 19, 20, and 27 as indicated above. Claims 1-31 are now pending in the application. Claims 1, 11, 17, 19, 20, and 27 are independent claims.

Applicants acknowledge the Examiner's citation of statutory authority as a basis for claim rejections.

Applicants thank the Examiner for the time spent during a telephone interview on December 21, 2007 where the currently pending claims, a proposed amendment to the current

claims, and the references cited against the current claims were discussed. Agreement was not reached, but the interview significantly assisted the undersigned in understanding the parts of the cited references relied on by the Examiner.

II. Rejections under 35 U.S.C. § 112

The Examiner has rejected claims 21 and 29-30 under 35 U.S.C. § 112 ¶ 2, as being indefinite for failing to particularly point out and distinctly claim the subject matter of the invention. In particular, the Examiner states that “a 1-Delta amount of stock” and “a Delta amount of stock” render the claims indefinite as it is unclear what the applicant is referring to. Applicants respectfully traverse the rejection.

In non-limiting examples, the specification states at page 13, lines 1-10:

Another way in which a third party can hedge the risk associated with the price of the underlying stock is to execute what is referred to as “delta hedging.” In addition to the theoretical price of an option, the Black-Scholes formula also produces delta. Delta is a measure of the sensitivity of the calculated option value to small changes in the share price. For example a delta of .50 indicates a half-point or 50¢ rise in premium for every dollar that the stock price rises. Delta hedging involves buying or shorting shares in an amount equal to delta multiplied by the number of options short or long respectively. When a party is long call options, as would be the case with the instant invention, it is therefore necessary to short a number of shares equal to the number of options owned times delta. The arrangement generally makes the option position immune from small changes in the price of the underlying share.

Delta changes in conjunction with the price of the shares. The sensitivity of delta to changes in the share price is quantified as gamma. As the share price and delta change correspondingly, it becomes necessary to change the number of shares long or short. This is known as “dynamic delta hedging” or “running a delta book.”

Thus, a description of Delta, and the concept of using Delta in the context of the invention is provided. Then, in further non-limiting examples, the specification describes a sale of a Delta amount of securities (page 15, line 7); purchase of a 1-Delta amount of stock (page 15, line 12); sale of a 1-Delta amount of stock (page 15, line 13); determination of whether Delta is

near 1 (page 16, lines 1-2 and line 10; page 17, line 18); determination of whether Delta is not hear 1 (page 17, line 15); determination of whether Delta is zero (page 17, lines 21-22); determination of whether Delta is 1 (page 18, line 2); and borrowing a delta amount of stock (page 16, line 8). All of these non-limiting examples clearly explain the concept of Delta, and use of Delta in the invention, and in particular the concepts of 1-Delta and Delta amounts of stock, as recited in the claims. Withdrawal of the rejection is respectfully requested.

III. Rejections under 35 U.S.C. § 102

The Examiner has rejected claims 1-5 and 11-20 under 35 U.S.C. § 102 as being anticipated by *Rudkin* (US Patent Pub. No. 2004/0199449).

With respect to claim 1, the claim recites: A method for transfer of employee stock options, the method comprising: purchasing all rights to an employee stock option from an employee holding the employee stock option, wherein purchase does not require exercise of the employee stock option; and hedging the employee stock option.

*Rudkin* does not disclose purchase of all rights to an employee stock option from an employee holding the employee stock option, where the purchase does not require exercise of the employee stock option, followed by hedging of the employee stock option. In *Rudkin* any purchase of an employee stock option as recited in paragraph [0025] appears to be an initial purchase of the ESO by the employee from the employer. Further, in *Rudkin* hedging is actually not performed because as stated in *Rudkin* “employees, unlike outside investors are generally unable to hedge the risk the option will decrease in value and are typically poorly diversified.” Further, to the extent that quoted statement implies that outside investors are able to hedge, it is clear that the statement is referring to hedging of traditional options by outside investors, and not hedging of employee stock options by outside investors. This is because at paragraph [0025]

*Rudkin* further states that “ESOs cannot be traded. Hence, there is no market price for them and the only way for employees to obtain value to meet liquidity requirements or to attempt to diversify their portfolio is to exercise them.” Those are precisely the types of problems described in the application for the current invention, many of which are resolved by the current invention. Withdrawal of the rejection for claim 1 as to *Rudkin*, is respectfully requested.

Independent claims 11, 17, 19, 20, and 27 have limitations similar to claim 1, Applicants respectfully submits that those independent claims are allowable over *Rudkin* for similar reasons, and asks that the rejections be withdrawn.

Although not cited in the rejection under § 102, during the interview the Examiner also discussed *Sullivan*. Applicant therefore points out that for any ESO’s in *Sullivan*, it appears there is no purchase of all rights to an employee stock option from an employee holding the employee stock option, where the purchase does not require exercise of the employee stock option, and hedging the employee stock option. If there is any transfer of rights to an ESO in *Sullivan* it appears to be limited to a security interest such as for a margin account, and it is not a transfer of all rights.

IV. Rejections under 35 U.S.C. § 103

The Examiner has rejected claims 6-10 and 20-31 under 35 U.S.C. § 103 as being unpatentable over *Rudkin* in view of *Sullivan* (US Patent Pub. No. 2002/0194136).

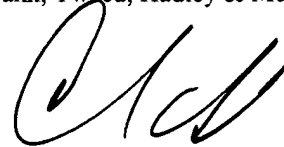
Claims 6-10 depend from claim 1 and are therefore allow over the references for the reasons provided above.

Independent claim 20 and 27 include limitations similar to claim 1, and are allowable for the reasons provided with respect to claim 1. Dependent claims 21-26 and 28-31, which depend from claims 20 and 27 are also therefore allowable over the references.

V. Request for Reconsideration

Applicants respectfully submit that the claims of this application are in condition for allowance. Accordingly, reconsideration of the rejection and allowance is requested. If a conference would assist in placing this application in better condition for allowance, the undersigned would appreciate a telephone call at the number indicated.

Respectfully submitted,  
Milbank, Tweed, Hadley & McCloy LLP



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